THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.18425 AND 25582 OF 1997

DATED: -10-2007

W.P.No.18425 of 1997

BETWEEN

Talari Venkayamma,
W/o. Late Kantha Raju,
R/o. Indukuru Village,
Devipatnam Mandal,
East Godavari District
and others.

...PETITIONERS

AND

The Commissioner of Survey,
Settlement and Land Records,
Government of Andhra Pradesh,
Hyderabad and others.

...RESPONDENTS

W.P.No.25582 of 1997

BETWEEN

Srikakualpu Suryanarayana Murthy,
S/o. Veeranna, R/o. Pudipalli Village,
Rampachodavaram Mandal,
East Godavari District.

...PETITIONER

AND

The Commissioner of Survey,
Settlement and Land Records,
Government of Andhra Pradesh,
Hyderabad and others.

...RESPONDENTS

ORDER:

Similar contentions have been raised by both the counsel appearing for the petitioners as well as the respondents, as such, both the writ petitions are disposed by a common order.

2. These writ petitions have been filed questioning the appellate orders passed by the Commissioner of Survey, Settlement and Land Records, in confirming the orders of the Director of Settlements as well as the Settlement Officer.

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3. The first petitioner is the wife and the petitioners 2 and 3 are the sons of Late Kantha Raju and their predecessors in title were in continuous possession of the land in an extent of 1.24 hectares in Sy.No.354/4, 0.72 hectares in Sy.No.359/7 and 0.04 hectares in Sy.No.262/3 of Indukur Village, Devipatnam Mandal, East Godavari District. The said lands were part of the Polavaram B. Zamin Estate, which was taken over by the Government on 07.04.1949 under the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short 'the Act'). It is stated that the petitioners and their predecessors in title have been in continuous possession of the said lands since 85 years and the said lands are ryotwari lands and the right of the petitioners is protected under the provisions of Section 11 of the Act. It is stated that the land holder granted Ryoti Patta and collected the rents from the petitioners' family members and after abolition of the estate the local revenue authorities also collected the

rents but the ryotwari patta has not been granted in favour of the ryots, who are entitled, even after the lapse of 30 years.

4. It is further stated that the third respondent had taken up a suo motu enquiry under the provisions of the Andhra Pradesh (Scheduled Areas Ryotwari Settlements) Regulation, 1970 (Regulation II of 1970) and the husband of the first petitioner made a claim for grant of ryotwari patta by filing a copy of the patta granted by the land holder and tax receipts; but the claim was disallowed by order dated 31.05.1978 in Case No.2907 on the ground that the said Late Kantha Raju failed to establish his claim in the scheduled lands by producing adequate documentary evidence. It is the case of the petitioners that their claim falls under the first proviso to Section 7(1) of Regulation II of 1970 but whereas the Settlement Officer rejected the claim taking into consideration the second proviso to Section 7(1) of Regulation II of 1970. Against the said order an appeal filed before the second respondent – Director of Settlements was also erroneously dismissed by order dated 21.11.1985 in A.P.No.435/1978 and against which the further appeal filed before the Commissioner – first respondent was also dismissed by impugned order in Case No.L3/147/1987 dated 16.11.1996. It is the further case of the petitioners that under the first proviso to Section 7(1) of Regulation II of 1970 they are entitled to ryotwari patta and though they are found to be in continuous possession of the said lands from the notified date 01.05.1945 the respondents have erroneously rejected their claim applying second proviso to Section 7(1) of Regulation II of 1970.

5. It is further stated that the Deputy Collector, Tribal Welfare, initiated proceedings in LTRP.No.153/1977 on a complaint made by one Dusari Yellavathi Ratnam W/o. Nuka Raju under Section 3 of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation I of 1970 alleging that the said lands were sold in favour of Kantha Raju and the Deputy Collector held that the said Kantha Raju belongs to Mala caste notified as hill tribe as on the date of purchase by registered sale deed dated

01.07.1957, therefore, the transfer was not hit by the Act I of 1917 and Regulation I of 1959 has no retrospective effect. The subject matter of LTRP.No.153/97 dated 06.03.1978 was in regard to an extent of 3 acres of land under Patta No.48 A, Paimoish No.90 B bounded on the East by the land of Yalagada Sakurayya; West by the land of Yalagada Gadeyya, South by the land of Smt. Dusari Palavathi Ratnam and north by Puntha.

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6. It is the case of the petitioner that he is in possession of an extent of 0.52 hectares in Sy.No.51/4 and 0.19 hectares in Sy.No.53/2 of Pudipally Village, Rampachodavaram Mandal, East Godavari District and consequent to the abolition of estates the ryots are entitled for ryotwari patta in respect of ryot lands under Regulation II of 1970. Accordingly, he made a claim for ryotwari patta under Section 7(1) read with Section 9 of Regulation II of 1970 but the Settlement Officer, Rajahmundry, disallowed the claim by order dated 26.07.1977 in Case No.1825 on the ground that there is no record to show possession of the non-tribals from the year 1917 onwards. Against the said order an appeal in Appeal No.323/1977 was filed before the Director of Settlements and the appellate authority allowed the claim for patta for land in Sy.No.64/1 but disallowed the claim in respect of the land in Sy.Nos.51/4 and 53/2. Against which the further appeal filed before the Commissioner was also dismissed by order dated 01.10.1992 in Case No.L3/1559/1981 holding that the petitioner failed to establish any evidence to show that he was lawfully inducted and that he was in lawful possession.

7. The common contentions raised in the writ petitions are that the lands in question are part of Polavaram Zamin Estate covered under the provisions of the Act and vests with the Government. The husband of the first petitioner in W.P.No.18425 of 1997 purchased the said lands from the scheduled tribe, who was having patta, the erstwhile estate holder on 01.05.1957. The complaint made by one Smt. Dusari Palavathi Ratnam under the land

transfer regulation I of 1959 as amended by Regulation I of 1970 was dismissed on 06.03.1979 by the Deputy Collector holding that the purchase by the husband of the first petitioner, who belongs to Mala community and notified as hill tribe,
is not hit by the provisions of Section 7(1) of Regulation II of 1970 but the Settlement Officer; the Director of Settlements and the Commissioner erroneously disallowed the claim of the petitioners.

8. It is the case of the petitioners in W.P.No.25582 of 1997 that the Deputy Collector (Tribal Welfare), Rajahmundry in LTRP.No.227 of 1976 by order dated 31.08.1978 held that the possession of the petitioner is not hit by the provisions of the Land Transfer Regulation
I of 1959 and the land was not in possession of any tribal community, but the Settlement Officer, the Director of Settlements and the Commissioner erroneously disallowed the claim of the petitioner.

9. Under Regulation II of 1970 all persons are entitled to ryotwari patta in the schedule area in respect of ryotwari lands whether they are schedule tribes or not where no settlement has been effected. Under Section 9(2) the Settlement Officer may suo motu and shall on an application made by any person, examine the relevant records and pass an order granting ryotwari patta to the ryot in respect of the lands concerned or refuse to grant patta. Under Section 7(1) every ryot in the scheduled areas to which regulation applies shall be entitled to ryotwari patta in respect of all cultivable lands which ought to have been properly included in the holding and which are not lands in respect of which any other person is entitled to a ryotwari patta under any other law for the time being in force in the State relating to grant of ryotwari patta. Under first proviso to Section 7(1) a person will be entitled to a ryotwari patta under the Act if the lands have been continuously in the occupation of that person form the notified date 01.07.1945. Under Section proviso to Section 7(2) a person of the scheduled tribe alone is entitled to ryotwari patta in respect of the cultivable lands, if such person has been in

possession or in occupation of the land for a continuous period of not less than 8 years immediately before the commencement of the Regulation, which came into force from 03.12.1970. The said possession or occupation shall not be void or illegal under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 or any other law for the time being in force.

10. I am of the opinion that the second proviso has no application to both the cases, as the petitioners are not scheduled tribe persons. Therefore, the only criteria for grant of ryotwari patta under first proviso to Section 7(1) is that they shall prove continuous possession in respect of the estate land from 01.07.1945. In both the cases,

the petitioners have failed to prove by any cogent or admissible evidence that they were in continuous possession and enjoyment from 01.07.1945. Therefore, I am of the opinion that even under the first proviso to Section 7(1) of Regulation II of 1970 the petitioners have failed to establish that they are entitled to get the ryotwari patta as they have not produced any evidence in respect of their continuous possession and enjoyment of the said lands in question from 01.07.1945. Therefore, I am not inclined to interfere with the concurrent findings recorded by the all the three authorities below. In view of the aforesaid facts and circumstances of the case, I do not see any merits in the writ petitions.

The writ petitions are accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

October , 2007
DSK